

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
BROWNSVILLE DIVISION**

MARY M. ZAPATA et al.,

Plaintiffs,

V.

UNITED STATES et al..

Defendants.

Civ. No. 1:13-cv-00022 (ASH)

## JOINT STATUS REPORT

Pursuant to the Court’s February 24, 2016 Minute Order, ECF No. 204, Plaintiffs, Mary M. Zapata, Amador Zapata, Jr., and Victor Avila, and the Federal Defendants, the United States Department of Justice (“DOJ”) and Department of Homeland Security (“DHS”), by and through their undersigned counsel, hereby submit to this Court the following Joint Status Report:

1. In this case, Plaintiffs have brought claims against the Federal Defendants pursuant to the Federal Tort Claims Act, 28 U.S.C. § 1346(b)<sup>1</sup>, and the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552. Plaintiffs’ FOIA claim concerns their request for investigatory records related to a 2011 operation conducted by the Immigration and Customs Enforcement (ICE) agency in Mexico.

2. In July 2015, the Court entered an order setting a schedule for the production of non-exempt records responsive to Plaintiffs' FOIA request. *See* Order, ECF No. 194. Pursuant to that schedule, the Federal Defendants were directed to produce 33% of the responsive records

<sup>1</sup> In July 2015, the Court dismissed Plaintiffs' tort claims against the Federal Defendants. *See* Amended Mem. and Order Regarding Fifth Amended Compl., ECF No. 198.

by October 2, 2015, another 33% by November 13, 2015, and all remaining responsive records, as well as a draft Vaughn index, by January 8, 2016. *Id.*

3. Six separate components of DOJ and DHS conducted searches for records that are potentially responsive to Plaintiffs' request. Pursuant to the Court's July 2015 order, three of these components—the Bureau of Alcohol, Tobacco, Firearms, and Explosives (“ATF”), the DOJ Office of Information Policy (“OIP”), and the Executive Office for United States Attorneys—produced a combined total of more than 850 pages of responsive records on the three production dates set by the Court. Also pursuant to that order, all six components provided Plaintiffs with draft Vaughn indices explaining the bases for the withholding of information pursuant to the nine exemptions enumerated by FOIA. See 5 U.S.C. § 552(b)(1)-(9). The Federal Defendants state that they have produced all non-exempt records responsive to Plaintiffs' FOIA request. Plaintiffs state that the Federal Defendants have improperly withheld documents responsive to Plaintiffs' FOIA requests.

4. Since the Federal Defendants made their final production of non-exempt responsive records and provided Plaintiffs with draft Vaughn indices, the parties have engaged in informal discussions in an effort to resolve Plaintiffs' FOIA claims. On February 23, 2016, the parties filed a Joint Motion to Vacate the Summary Judgment Briefing Schedule that had been previously entered by the Court. *See* ECF No. 203. The parties informed the Court in that motion that they would attempt to resolve informally the remaining issues in this case. *Id.* ¶ 5. In a Minute Order dated February 24, the Court granted the parties' motion and directed the parties to file a joint status report no later than March 31. *See* ECF No. 24. The Court further ordered that, should the parties be unable to resolve the issues remaining in the case, dispositive

motions would be due 30 days following the parties' providing notice of their inability to settle.

*Id.*

5. The parties hereby inform the Court that they have been unable to resolve the remaining issues in this case. Pursuant to the Court's Minute Order, dispositive motions will be due on May 2, 2016, which is 30 days following the parties' submission of this status report.

Dated: March 31, 2016

Respectfully submitted,

BENJAMIN C. MIZER  
Principal Deputy Assistant Attorney General

JOHN R. TYLER  
Assistant Branch Director

s/ Nathan M. Swinton  
NATHAN SWINTON (NY Bar)  
Trial Attorney  
United States Department of Justice  
Civil Division, Federal Programs Branch  
20 Massachusetts Avenue NW  
Washington, DC 20530  
Telephone: (202) 305-7667  
Fax: (202) 616-8470  
Nathan.M.Swinton@usdoj.gov

**ATTORNEYS FOR FEDERAL  
DEFENDANTS**

By: s/ Benigno Martinez  
Benigno (Trey) Martinez  
State Bar No. 000797011  
Federal Bar No. 23945  
[trey@mbymlaw.com](mailto:trey@mbymlaw.com)  
Tomas F. Tijerina  
State Bar No. 24070746  
Federal Bar No. 1062166  
[tomas@mbymlaw.com](mailto:tomas@mbymlaw.com)  
Antonio (Tony) Martinez

State Bar No. 13139000  
Federal Bar No. 1943  
[tony@mbmylaw.com](mailto:tony@mbmylaw.com)  
**LAW OFFICE OF BENIGNO (TREY)  
MARTINEZ, PLLC**  
**LAW OFFICE OF TONY MARTINEZ, PC**  
1201 E. Van Buren  
Brownsville, Texas 78520  
(956) 550-4868  
(956) 621-0135 (facsimile)

Raymond L. Thomas  
State Bar No. 19865350  
Federal Bar No. 10715  
[rthomas@ktglawfirm.com](mailto:rthomas@ktglawfirm.com)  
**KITTLEMAN & THOMAS, PLLC**  
4900-B North 10th Street  
McAllen, Texas 78504  
(956) 686-8797  
(956) 630-5199 (facsimile)

Magdalena Avila Villalobos  
State Bar No. 24029426  
Federal Bar No. 1785535  
[mvillalobos@radlawfirm.com](mailto:mvillalobos@radlawfirm.com)  
**RAD LAW FIRM**  
2001 Beach Street, Suite 600  
Fort Worth, Texas 76103  
(817) 543-1990  
(817) 543-1319 (facsimile)

Michael Rodriguez  
State Bar No. 00791553  
Federal Bar No. 18759  
Email: [mrodriguez@atlashall.com](mailto:mrodriguez@atlashall.com)  
Daniel G. Gurwitz  
State Bar No. 00787608  
Federal Bar No. 16895  
Email: [dgurwitz@atlashall.com](mailto:dgurwitz@atlashall.com)  
Charles W. Downing  
State Bar No. 24069631  
Federal Bar No. 1048595  
Email: [cdowning@atlashall.com](mailto:cdowning@atlashall.com)  
**ATLAS HALL & RODRIGUEZ, LLP**  
50 W. Morrison Rd., Ste. A  
Brownsville, Texas 78520  
(956) 574-9333 – Ph.

(956) 574-9337 – Fax

**ATTORNEYS FOR PLAINTIFFS**